BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ERICA REED, Claimant, vs. PEPSICO d/b/a FRITO LAY, Employer, and INDEMNITY INS CO OF N AMERICA, Insurance Carrier, Defendants.	File No. 5066991.01 A R B I T R A T I O N D E C I S I O N Head Note Nos.: 1108, 1402.40, 1803, 2206, 2701, 2907

Claimant Erica Reed filed a petition in arbitration on September 3, 2019, alleging she sustained an injury to her left leg and body as a whole on September 7, 2018, while working for the defendant, Pepsico, d/b/a Frito Lay ("Frito Lay"). Frito Lay and its insurer, the defendant, Indemnity Insurance Company of North America ("Indemnity Insurance"), filed an answer on September 12, 2019, admitting Reed sustained an injury to her left lower extremity, but denying she had sustained an injury to her body as a whole.

An arbitration hearing was held *via* CourtCall video conference on November 6, 2020. Attorney Channing Dutton represented Reed. Reed appeared and testified. Attorney Kent Smith represented Frito Lay. Joint Exhibit ("JE") 1 and Exhibits 1 through 13, and A through H were admitted into the record. The parties submitted a hearing report, listing stipulations and issues to be decided. Frito Lay waived all affirmative defenses.

The record was held open until December 11, 2020, for the receipt of post-hearing briefs and for the taking of additional depositions. No additional depositions were received. The briefs were received, and the record was closed.

STIPULATIONS

1. An employer-employee relationship existed between Frito Lay and Reed at the time of the alleged injury.

2. Reed sustained an injury, which arose out of and in the course of her employment with Frito Lay on September 7, 2018.

3. The alleged injury was a cause of temporary disability during a period of recovery.

4. Temporary benefits are no longer in dispute.

5. The alleged injury is a cause of permanent disability.

6. The disability is a scheduled member disability to the leg.

7. The commencement date for permanent partial disability benefits is July 26, 2019.

8. At the time of the alleged injury Reed's gross earnings were $677.64 per week, she was single and entitled to one exemption, and the parties believe her weekly rate is $429.62.

9. Prior to the hearing Reed was paid 22 weeks of compensation at the rate of $429.62 per week.

10. Costs have been paid.

ISSUES

1. What is the extent of disability?

2. Is Reed entitled to alternate medical care for her left knee under Iowa Code section 85.27?

3. Should costs be assessed against either party?

FINDINGS OF FACT

Reed lives in Urbandale, Iowa, with her boyfriend of fifteen years, Fred Jones. (Transcript, pages 14, 41; Exhibit 10) At the time of the hearing she was thirty-eight. (Tr., p. 14)

From March 2013 through April 2018, Reed worked as a front desk clerk and assistant general manager at the Marriott Fairfield Inns in Urbandale and Ankeny. (Exs. D, p. 23; 7, p. 33; 11) The job was physical in nature and required Reed to be on her feet for an eight-hour shift. (Exs. D, p. 23; 11) Reed assisted with all aspects of running the hotels, including cleaning the rooms, cooking and serving breakfast, and performing landscaping duties and property maintenance, including cutting the grass and shoveling the snow. (Ex. 11; Tr., pp. 17-20) According to her manager, Thressy Jones, the job required Reed to engage in frequent bending, squatting, and standing. (Ex. 11) Marriott does not allow employees to use chairs at the front desk and Reed had to stand for hours during her shift. (Ex. 11; Tr., p. 19) Thressy Jones never heard Reed complain of any problems with her knee and never observed Reed had any problems with her knee during the five years she worked with Reed. (Ex. 11) Reed denied sustaining any physical injuries while working for the Marriott. (Tr., p. 20)

In June 2018, Frito Lay hired Reed as a full-time customer service merchandiser specialist, where she was responsible for stocking Frito Lay products in stores, lifting boxes weighing up to forty pounds, and using a three-step ladder to reach the top shelves in the chip aisles in stores. (Exs. D, p. 23; 2, 21; 7, p. 33; Tr., pp. 24-27) Reed worked in two to four stores per day, going up and down and using her ladder approximately three-quarters of the time she spent at each store. (Exs. D, p. 23; 7, p. 33) Reed stocked product up high and down to her shin level, which required her to bend, stoop, and kneel. (Tr., pp. 26, 29) The position job description provides the position requires the ability to climb, push, pull, bend, stoop, and kneel for extended periods of time, frequent standing, walking, and stooping, and occasional kneeling on one knee, crouching or squatting, and crawling on the knees. (Ex. 2, pp. 21, 24-26)

Reed testified while she was working on September 7, 2018,

> I was using the two step ladder method. I basically got up on the stepladder and was starting to fill Doritos. I had Doritos in one hand, and my other hand on top of the actual ladder. I put in the Doritos. Coming down off the ladder, I believe there was [*sic*] groceries that kind of flew by me and kind of startled me. But when I came down, I twisted the wrong way and went down.

(Tr., pp. 30-31) Reed relayed her knee hurt right away and before the incident her left knee was working fine. (Tr., p. 31) During her deposition, Reed testified after the incident she felt sharp pain, "a pop on the inner left side of [her] knee, and a sharp pain underneath. Like right underneath [her] kneecap," as soon as she twisted. (Ex. A, p. 10)

Reed informed her supervisor of her work injury and that she was going to see her family medical physician, G. Eric Hockett, M.D. (JE 1, p. 22; Tr., p. 31) Reed was unable to finish her shift and went to Dr. Hockett's office. (Tr., p. 32) Dr. Hockett documented Reed had chronic bilateral knee pain and that she was complaining of acute worsening of left knee pain from the day before. (JE 1, p. 22) Dr. Hockett noted Reed had been going up and down ladders several times at work with "[n]o specific injury," and that she had been told she had advanced arthritis in the past. (JE 1, p. 22) Reed testified she told Dr. Hockett the injury happened that day. There was no evidence presented at hearing supporting an earlier date of injury or that Reed was not credible in reporting when she sustained the work injury. As analyzed below in the conclusions of law, I find Reed to be a credible witness. I find Dr. Hockett's record contains an error.

Reed called her manager after her appointment with Dr. Hockett and her manager told Reed she needed to be examined by DoctorsNow. (Ex. D, p. 24; Tr., pp. 31-32) That afternoon Reed attended an appointment with Ashley Ebert, ARNP with DoctorsNow, complaining of constant left knee pain that developed after she twisted her left knee when coming down from a ladder while stocking chips at work. (JE 1, p. 9) Reed reported she noticed pain and abnormal mild swelling, and relayed she had experienced a similar problem in the past. (JE 1, p. 9) Ebert noted on physical exam Reed had an abnormal gait, she was favoring her right lower extremity, and she had

mild swelling along the medial and lateral left knee joint lines. (JE 1, pp. 9-10) Ebert released Reed to return to work with restrictions of avoiding kneeling, squatting, twisting, and climbing ladders entirely, and to avoid prolonged standing. (JE 1, p. 10) Ebert ordered Reed to take a fifteen minute sit-down break every two to three hours, to use proper lifting techniques, and to ice and elevate her leg. (JE 1, p. 10)

Reed had a history of bilateral knee pain, obesity, and diabetes before the work injury. She also smokes tobacco.

During an appointment with Gary Hudson, PA-C, at Broadlawns on October 2, 2013, Hudson documented Reed had a history of bilateral knee pain dating back to high school when she was active in basketball and track. (JE 1, p. 1)

On February 26, 2014, Reed attended an appointment with Ian Lin, M.D., an orthopedic surgeon, complaining of right knee pain with a catching sensation. (JE 1, p. 3) Dr. Lin documented Reed reported she injured her right knee in 1997 or 1998 while playing basketball or running track and that she injured her left knee in Oklahoma in 2005 when she fell and smacked her knee on the ground while running to close a gate. (JE 1, p. 3) Reed testified the incident in Oklahoma happened in 1995, not in 2005, and that when she fell she landed on her left side. (Tr., p. 53) Dr. Lin documented Reed's knee swelled after the injury, and while the swelling went down, Reed reported she continued to have some pain in her left knee following the incident, but relayed "[i]t just is not nearly as bad as the right knee." (JE 1, p. 3)

On exam, Dr. Lin noted Reed had more medial joint space crepitus in her left knee than in her right knee, but her right knee was much more tender in the medial joint space compared to the left knee. (JE 1, p. 4) Dr. Lin documented x-rays of her knees showed tricompartmental osteoarthritis in her left knee with more narrowing in the knee joint space and that the right knee "actually looks quite normal on standing AP knees, lateral and merchant of the right knee," assessed Reed with right knee pain, most likely medial meniscus tear by history with mechanical symptoms and tenderness in the medial joint space and left knee osteoarthritis, and recommended magnetic resonance imaging. (JE 1, pp. 4-5)

On April 4, 2017, Reed attended an appointment with Dan Craig, PA-C, in Dr. Lin's office, complaining of left greater than right knee pain. (JE 1, p. 6) Craig documented Reed relayed the pain had been on and off over the past few years with mainly anterolateral with some medial symptoms and some swelling in the left more than the right, with a decrease in range of motion and some crunching and popping. (JE 1, p. 6) Craig listed an impression of left knee mild medial compartment osteoarthritis and right knee pain, noting he told Reed she did not have any specific degenerative change in her right knee, but she had a significant degenerative change in her left knee. (JE 1, p. 7) Craig recommended Reed continue taking anti-inflammatories and continue with weight loss. (JE 1, p. 7)

A week after her work injury, on September 14, 2018, Reed returned to DoctorsNow and was examined by Nicholas Ford, PA-C. (JE 1, p. 12) Reed reported she had no improvement in her left knee swelling and pain, noting she was still standing and walking a lot, but someone was working with her performing the kneeling and

ladder climbing functions of her job. (JE 1, p. 12) Reed relayed she had been taking 800 milligrams of ibuprofen, which was not helping with the pain, and that her knee was giving out and locking up on her. (JE 1, p. 12) Ford continued Reed's work restrictions and added lifting restrictions of no lifting from waist to shoulder, below waist, or pulling or pushing greater than fifteen pounds, and to engage in sit-down work only, and recommended magnetic resonance imaging. (JE 1, pp. 13-15) DoctorsNow ordered physical therapy for Reed. (JE 1, pp. 34-36).

On November 10, 2018, Reed attended a follow-up appointment with Ebert, reporting another work injury. (JE 1, pp.1, 6) Reed relayed she was coming down off a ladder at work that day when her left knee gave out, she hit the floor, and she was unable to bear full body weight and experiencing severe pain with swelling. (JE 1, p. 16) Ebert diagnosed Reed with a sprain of the medial collateral ligament of the left knee, sequela, continued Reed's restrictions, and also ordered Reed to avoid jumping and running entirely, and to continue elevating and icing her knee. (JE 1, pp. 17-18)

Reed underwent left knee magnetic resonance imaging on November 12, 2018. (JE 1, p. 32) The reviewing radiologist listed an impression of horizontal tear through the medial meniscus with an adjacent parameniscal cyst, chronic rupture of the anterior cruciate ligament, and medial and patellofemoral compartment osteoarthritis accelerated for the patient's age. (JE 1, pp. 32-33) Upon receiving the imaging, DoctorsNow referred Reed to orthopedic surgery. (JE 1, p. 19)

On November 16, 2018, Reed returned to DoctorsNow and was examined by Elisabeth Jeffords, PA-C. (JE 1, p. 20) Reed reported she was performing office work, her swelling was down, she was using a cane while ambulating at home and a crutch at work, and she using a TENS unit. (JE 1, p. 20) Jeffords diagnosed Reed with a meniscus tear and chronic instability of her left knee and continued her restrictions. (JE 1, p. 21)

On December 18, 2018, Reed attended an appointment with Scott Neff, D.O., an orthopedic surgeon, for an independent medical examination. (JE 1, p. 37) Dr. Neff noted he had reviewed Reed's medical records, but he was not provided with any imaging of her left knee. (JE 1, p. 37) Dr. Neff observed Reed walked with a significant antalgic gait and she used a cane to protect her left knee. (JE 1, p. 39) Dr. Neff documented Reed reported she had experienced aching and soreness in her knee in the past dating back to 2012 when she played basketball, and that she could not recall a specific injury, but she had never had pain like she was currently experiencing or activity limitations. (JE 1, pp. 38-39) Reed told Dr. Neff that in 2017 Des Moines Orthopedic Surgeons told her she had arthritis. (JE 1, p. 37) Dr. Neff opined Reed's work injury aggravated, accelerated or lighted-up a preexisting condition in her left knee and recommended a left knee arthroscopy. (JE 1, pp. 41-42)

The last day Reed worked for Frito Lay was January 7, 2019. (Tr., p. 44)

During an appointment on February 5, 2019, Dr. Neff assessed Reed with chronic left knee pain, restricted her from working, and ordered magnetic resonance imaging. (JE 1, pp. 43-45) The reviewing radiologist listed an impression of:

1. Horizontal tear of the medial meniscus with adjacent parameniscal cyst.

2. Chronic anterior cruciate ligament rupture.

3. Tricompartmental osteoarthritic changes/chondromalacia, advanced for the patient's age. This is most pronounced in the medial compartment where there is moderate chondral thinning/loss.

(JE 1, p. 33)

Dr. Neff reviewed the imaging and noted the imaging showed a horizontal tear of the medial meniscus with parameniscal cyst and a chronic anterior cruciate ligament rupture. (JE 1, p. 46) In a letter to the third-party administrator, Dr. Neff documented:

> [a]s anticipated, the MR scan shows a horizontal tear of the medial meniscus with parameniscal cyst. She has a chronic anterior cruciate ligament rupture. It is hard to know when the chronic ACL rupture occurred. She also has tricompartmental osteoarthritic changes and chondromalacia, which are fairly advanced for her age of only 37.
>
> I think we have a complex mixture of circumstance and she is going to be administratively difficult. She injured her knee in 9/2018. She has had trouble with the knee before that, but was using Motrin or Advil and said she had aching, but no swelling and no pain. Now she is having pain, I do not think the pain she is experiencing is coming from the chronic ACL rupture and it is certainly possible that the ACL rupture predated her injury. Her pain is mostly in the medial hemijoint and this is likely associated with the meniscal tear. Superimposed on that are osteoarthritic changes, which we commonly see in a young patient who is as morbidly obese as she is.
>
> I think the next course of action is diagnostic and surgical arthroscopy to look carefully at her medial meniscus and see if we can saucerize or trim out the torn part. We will look indeed at the ACL. Sometimes a chronic ACL can be rounded and misshapen and appear really old and sometimes a "chronic" ACL tear can look more fresh. Her injury is not consistent with an ACL tear. She simply twisted her knee as she was coming down the ladder and this in my opinion is not typical causative circumstance for ACL rupture.

(JE 1, p. 46)

On April 18, 2019, Dr. Neff performed the left knee arthroscopy with partial medial and partial lateral meniscectomy and debridement of ACL eminence fracture. (JE 1, pp. 50-51)

Reed testified after the surgery her left knee felt worse. (Tr., p. 35) Before the surgery, she used a cane at times, but she was able to walk some without it. (Tr., p. 35)

After the surgery, she could not move much without using crutches, a walker, or a walking stick inside or outside her home. (Tr., p. 35)

During an appointment on May 1, 2019, Dr. Neff documented,

> [t]his is a complex unfortunate situation. This patient is morbidly obese. She is in a wheelchair today. She says she is not able to walk or stand.
>
> Her partner with her says she needs something more for pain.
>
> At surgery, we looked in her left knee and found grade I to grade II patellofemoral chondromalacia with chronic fracture of the cartilage in the trochlear notch. There is no way to tell whether this was anyway acute with her injury history of 9/2018.
>
> Lateral meniscus showed an anterior horn tear extending about one-third. There was a bare spot of complete loss of articular cartilage on the tibial surface of the lateral tibial plateau. This is a result of arthritis and not injury. We saucerized the medial meniscus.
>
> This is a complex circumstance in someone who is only 37 years of age. She fell off a ladder at work. She likely has pre-existent significant arthritic disease and is morbidly obese. In retrospect, it would have been easier to give an accurate diagnosis as to what was related to injury and what was arthritis had arthroscopy been done sooner after her injury.

(JE 1, p. 49) Dr. Neff recommended Reed be transferred to a tertiary center such as the University of Iowa for consideration of a chondroplasty, a mosaicplasty, or an OATS type procedure, but also noted most orthopedic surgeons would not perform that type of procedure on a person who is morbidly obese. (JE 1, p. 49) Dr. Neff prescribed pain medication, ordered physical therapy and a walker or crutches, and restricted Reed from working. (JE 1, p. 49)

Dr. Neff referred Reed to the Broadlawns Pain Management Center for treatment with Morgan Brown, ARNP. (JE 1, pp. 52-55) Brown recommended topical lidocaine, Tylenol, and ibuprofen for pain management, with icing and elevation. (JE 1, p. 54)

On July 25, 2019, Reed attended an appointment with Matthew Bollier, M.D., at the University of Iowa Hospitals and Clinics ("UIHC"). (Ex. B, p. 2; Tr., p. 36) Thressy Jones, her former manager and friend, drove Reed to the UIHC and attended the appointment with Reed. (Ex. 11; Tr., pp. 37-38) Dr. Bollier's nurse came into the room and touched Reed's swollen knee to try to feel the swelling. (Tr., p. 36) Dr. Bollier came in. Reed testified, and Thressy Jones reported, Dr. Bollier did not touch Reed or examine her and he told Reed he did not know why she was there because she had preexisting disease, which was not related to a workers' compensation injury. (Tr., pp. 36-37; Ex. 11) Reed relayed Dr. Bollier did not discuss her work history and he met with her for approximately five minutes. (Tr., p. 37) Thressy Jones reported Dr. Bollier told Reed he had seen her condition before and there was nothing he could do for her because she just had arthritis. (Ex. 11)

Dr. Bollier reviewed Reed's medical records and documented she was a poor historian. (Ex. B) Dr. Bollier assessed Reed with chronic left knee pain, opined Reed's work injury caused a temporary aggravation of her underlying arthritis, finding a fall at work "did not cause the ACL rupture which is chronic in nature and did not cause osteoarthritis." (Ex. B, p. 5) Dr. Bollier recommended an injection, which Reed declined. (Ex. B, p. 5) Dr. Bollier documented Reed would likely need a knee arthroplasty that would improve her pain, but opined Reed's need for an arthroplasty was not related to the work injury, and he placed Reed at maximum medical improvement. (Ex. B, p. 5) Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Bollier assigned Reed a permanent partial impairment rating of two percent as a result of Reed's partial medial meniscectomy under Table 17-33. (Ex. B, p. 5) Based on Dr. Bollier's opinion, Frito Lay and Indemnity Insurance terminated Reed's care and temporary benefits. (Ex. 3, p. 27)

On August 26, 2019, Reed attended an appointment with her primary care provider, Lindsay Nees, PA-C, and requested a referral to an orthopedic surgeon for chronic left knee pain. (JE 1, p. 31)

On January 27, 2020, Reed attended an appointment with Richard Goding, M.D., an orthopedic surgeon with Capital Orthopaedics, complaining of knee pain that can be moderate to severe and sharp with weightbearing, associated with clicking, catching, grating, grinding, and swelling. (JE 1, p. 57) Reed relayed at times it was very difficult for her to bend her knee. (JE 1, p. 57) Dr. Goding assessed Reed with left knee osteoarthritis, noted she was obese and diabetic, recommended a Visco supplementation injection, and noted Reed may be a candidate for knee replacement in the future, but she needed to work on losing weight and controlling her diabetes. (JE 1, p. 57) Dr. Goding performed an injection on February 5, 2020. (JE 1, p. 59) Reed reported the injection did not help her. Reed did not seek additional treatment from Dr. Goding after the Covid-19 Pandemic developed. As of the hearing, Dr. Goding had moved his practice to a new location more than an hour from Reed's home.

On September 1, 2020, Sunil Bansal, M.D., an occupational medicine physician, conducted an independent medical examination for Reed. (Ex. 1) Dr. Bansal reviewed Reed's medical records and performed his examination through Zoom and telephone given the Covid-19 Pandemic. (Ex. 1) During her meeting with Dr. Bansal Reed reported she continues to have constant pain and swelling in her left knee and her patella pops out. (Ex. 1, p. 14) Reed relayed she has difficulty bending her knee, she cannot kneel or squat, she has difficulty climbing stairs, and needs assistance with showering and getting into bed. (Ex. 1, p. 14)

Dr. Bansal diagnosed Reed with a left knee medial meniscus tear, lateral meniscus tear, and chronic anterior cruciate ligament tear, noting she was status-post a left knee examination under anesthesia, arthroscopy with partial medial and lateral meniscectomies and debridement of an anterior cruciate ligament eminence fracture. (Ex. 1, p. 15) Dr. Bansal documented Reed injured her left knee when she was coming down a ladder and slipped, and she came down on her knee. (Ex. 1, p. 15) Dr. Bansal opined the mechanism of slipping off the ladder caused left knee medial and lateral

meniscal tears, as well as an anterior cruciate ligament tear, and "set in motion a series of biochemical events [that] led to aggravation and acceleration of her left knee arthritis." (Ex. 1, p. 15) Dr. Bansal opined:

> [i]n fact, x-rays taken of her left knee before and after the September 7, 2018 injury indicate that an extreme acceleration of the arthritic changes to her knee took place after the injury consistent with the above analysis, and cannot be explained by any other personal factor, including age or weight in that timeframe.
>
> *Date of service April 4, 2017, Daniel Craig, PA-C*
>
> *X-RAYS: The bilateral knees show no acute fractures or bony abnormalities. The left knee has a slightly narrowed medial joint space*
>
> VERSUS:
>
> *Date of service February 5, 2019. X-rays of the left knee.*
>
> *IMPRESSION: Moderate degenerative change, with the most narrowing in the medial tibiofemoral compartment*
>
> This accelerated arthritic change to the left knee secondary to the September 7, 2018 injury has now necessitated a left knee replacement.

(Ex. 1, p. 16) (emphasis in original) Dr. Bansal recommended permanent restrictions of no kneeling or squatting, to avoid standing or walking for more than fifteen minutes at a time, and to use an assistive device for walking, as needed. (Ex. 1, p. 16)

Using Table 17-33 of the AMA Guides, Dr. Bansal assigned Reed a ten percent lower extremity impairment for the medial and lateral meniscectomies and a "projected" seven percent lower extremity impairment for the anterior cruciate ligament laxity secondary to her tear for a combined sixteen percent lower extremity impairment. (Ex. 1, p. 17)

Benjamin Beecher, M.D., an orthopedic surgeon, conducted an independent medical examination of Reed for Frito Lay and Indemnity Insurance on September 24, 2020. (Ex. C) Dr. Beecher noted Reed was a no-show to the clinic twice for an independent medical examination. (Ex. C, p. 8) Reed reported she did not want to attend the appointment in-person because of the Covid-19 Pandemic and that she offered to appear by video. Dr. Beecher ultimately performed a records review only, and he did not speak with Reed before issuing his report.

Dr. Beecher opined the work injury aggravated Reed's underlying arthritis and that he could not determine if she suffered a meniscal tear at the time of the injury or if she had a degenerative meniscal tear. (Ex. C, p. 10) He further opined Reed's work injury "did slightly aggravate her underlying arthritis" and without examining her, it was difficult to tell how significantly her arthritis affected her prior to her injury. (Ex. C, p. 10) He also opined "her work injury with uncertainty of meniscal pathology of being acute or chronic potentially would lead to the need for knee arthroscopy." (Ex. C, p. 11) Dr. Beecher found Reed reached maximum medical improvement when she recovered

from surgery and did not assign any permanent restrictions as a result of the work injury. (Ex. C, p. 11) Using the AMA Guides, Dr. Beecher assigned Reed a ten percent lower extremity permanent impairment rating given she underwent a knee arthroscopy with partial medial and partial lateral meniscectomies and opined Reed did not need any further treatment for her work injury. (Ex. C, p. 11)

Reed testified her left knee has not gotten any better form the time she injured it. (Tr., p. 32) Reed relayed she has not improved since Dr. Neff operated on her knee and that her condition has become worse. (Tr., pp. 35-36) Reed reported her knee locks up, swells, and is painful. (Tr., p. 41) Reed testified she cannot stand long and she has to use a crutch, cane, or walker when walking and standing. (Tr., p. 42) Reed needs assistance from her boyfriend, Fred Jones, when getting in and out of bed and in and out of the shower. (Tr., p. 40, 41, 43) Before her work injury, Reed was active in her church and enjoyed cooking, which are activities she does not engage in now due to her mobility problems and pain. (Tr., p. 42)

In a video statement, Fred Jones reported he has lived with Reed for fifteen years and that before her work injury she was very active and busy eighteen hours per day and she did not like sitting and "doing nothing." (Ex. 10) He noted Reed has a difficult time getting in and out of the car and has a hard time walking to the car. (Ex. 10) Fred Jones relayed Reed's mobility problems and pain worsened after Dr. Neff performed surgery on her. (Ex. 10)

Thressy Jones has known Reed since they were children and she reconnected with Reed when she was her manager at the Marriott, starting in 2013. (Ex. 11) Thressy Jones reported she and Reed enjoyed riding bikes together, going to the gym, and camping before her work injury. (Ex. 11) Thressy Jones relayed Reed did not have any difficulty performing her job duties for the Marriott due to her knee, weight, or body size. (Ex. 11) Thressy Jones reported the work injury at Frito Lay changed Reed and she has never recovered. (Ex. 11)

CONCLUSIONS OF LAW

I. Applicable Law

This case involves the issues of nature and extent of disability, alternate medical care, and costs under Iowa Code sections 85.27, 85.34, and 86.40. In 2017, the Iowa Legislature enacted changes to Iowa Code chapters 85, 86, and 535 effecting workers' compensation cases. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.71, 86.26, 86.39, and 86.42 apply to injuries occurring on or after the effective date of the Act. This case involves an injury occurring after July 1, 2017, therefore, the provisions of the new statute involving nature and extent of disability under Iowa Code section 85.34 apply to this case.

The calculation of interest is governed by Sanchez v. Tyson, File No. 5052008 (Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid

when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. Again, given this case concerns an injury occurring after July 1, 2017, the new provision on interest applies to this case.

II. Nature and Extent of Disability

The parties agree Reed sustained an injury to her left knee. The parties disagree on the nature and extent of the injury to her left knee. Reed relies on the opinion of Dr. Bansal. Frito Lay and Indemnity Insurance rely on the opinion of Dr. Bollier. Multiple experts have given differing opinions in this case, including Drs. Bansal, Beecher, Bollier, and Neff. The disagreement involves an issue of causation.

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

It is well-established in workers' compensation that "if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

> a disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967). The Iowa Legislature did not modify this standard in 2017.

On April 18, 2019, Dr. Neff performed a left knee arthroscopy with partial medial and partial lateral meniscectomy and debridement of ACL eminence fracture on Reed. (JE 1, pp. 50-51) Drs. Neff, Bollier, and Beecher are orthopedic surgeons and have superior training to Dr. Bansal, an occupational medicine physician. Frito Lay and

Indemnity Insurance selected Dr. Neff to provide an opinion and treatment and selected Drs. Bollier and Beecher to conduct independent medical examinations. Reed retained Dr. Bansal for an independent medical examination only.

Dr. Neff was the first orthopedic surgeon to examine Reed, he treated her over time, and he performed surgery on Reed's left knee. Before surgery Dr. Neff opined he did not believe Reed's pain was coming from a chronic ACL rupture, which may have predated the injury, noting her pain was mostly in the medial hemijoint and was likely associated with the meniscal tear. (JE 1, p. 46) Dr. Neff recognized the case was complex, noting when he performed surgery he "found grade I to grade II patellofemoral chondromalacia with chronic fracture of the cartilage in the trochlear notch." (JE 1, p. 49) Dr. Neff opined "[t]here is no way to tell whether this was anyway acute with her injury history of [September 2018]." (JE 1, p. 49) Dr. Neff further opined Reed's lateral meniscus showed an anterior horn tear extending one-third with a complete loss of cartilage on the tibial surface of the lateral tibial plateau that was the result of arthritis and not injury. (JE 1, p. 49)

Dr. Bollier is also an orthopedic surgeon specializing in the knee and shoulder at the UIHC, a tertiary medical center. Dr. Bollier reviewed Reed's medical records and documented she was a poor historian. (Ex. B) Dr. Bollier assessed Reed with chronic left knee pain, opined Reed's work injury caused a temporary aggravation of her underlying arthritis, finding her fall at work "did not cause the ACL rupture which is chronic in nature and did not cause osteoarthritis." (Ex. B, p. 5) Dr. Bollier found the work injury did not cause the ACL rupture or osteoarthritis. No physician has opined the work injury caused Reed's osteoarthritis. Dr. Bollier did not address whether the work injury could have accelerated or lighted up Reed's osteoarthritis. He did not explain his bare conclusion by citing to any medical journals supporting his contention. Dr. Bollier also assigned a two percent permanent impairment rating under the AMA Guides. (Ex. B, p. 5) The parties agree the appropriate rating is at least ten percent.

Reed testified, and Thressy Jones stated, Dr. Bollier did not examine Reed's knee, touch her, or discuss her work history. (Tr., pp. 36-37; Ex. 11) This raises an issue of credibility. During the hearing I assessed Reed's credibility and the Zoom video interview of Thressy Jones by considering whether Reed's testimony and Thressy Jones's statement are reasonable and consistent with other evidence I believe, whether they have made inconsistent statements, their "appearance, conduct, memory and knowledge of the facts," and their interest in the case. State v. Frake, 450 N.W.2d 817, 819 (Iowa 1990). Reed has an obvious interest in the outcome of this case. Thressy Jones is Reed's friend. During Reed's testimony, I found she engaged in direct eye contact, her rate of speech was appropriate, and she did not engage in any furtive movements. Contrary to the statement of Dr. Bollier, I did not find Reed to be a poor historian or witness. Her memory was clear and consistent during hearing and during her deposition. I also found Thressy Jones's recorded statement persuasive. She, likewise, engaged in direct eye contact, her rate of speech was appropriate and she did not engage in any furtive movements. I find Dr. Bollier performed a records review of Reed's case, but did not physically examine her or discuss her work injury or symptoms

predating and following the work injury. I do not find his opinion persuasive for these reasons and for the reasons listed above and my credibility determinations.

Dr. Beecher, an orthopedic surgeon, conducted a records review for Frito Lay and Indemnity Insurance in September 2020. (Ex. C) Dr. Beecher's opinion is equivocal. He opined the work injury aggravated Reed's underlying arthritis and that he could not determine if she suffered a meniscal tear at the time of the injury or if she had a degenerative meniscal tear. (Ex. C, p. 10) He further opined Reed's work injury "did slightly aggravate her underlying arthritis," and without examining her, it was difficult to tell how significantly her arthritis affected her prior to her injury. (Ex. C, p. 10) He also opined "with uncertainty of meniscal pathology of being acute or chronic potentially would lead to the need for knee arthroscopy," yet he recommended no additional treatment or surgery related to the work injury. (Ex. C, p. 11) While Reed missed two appointments with Dr. Beecher, she offered to meet with him by video, given the Covid-19 Pandemic. .

Dr. Bansal performed a records review and conducted his exam by video and telephone due to the Covid-19 Pandemic. (Ex. 1) Dr. Bansal diagnosed Reed with a left knee medial meniscus tear, lateral meniscus tear, and chronic anterior cruciate ligament tear, noting she was status-post a left knee examination under anesthesia, arthroscopy with partial medial and lateral meniscectomies and debridement of an anterior cruciate ligament eminence fracture. (Ex. 1, p. 15) Dr. Bansal opined the mechanism of slipping off the ladder caused left knee medial and lateral meniscal tears, as well as an anterior cruciate ligament tear and "set in motion a series of biochemical events [that] led to aggravation and acceleration of her left knee arthritis." (Ex. 1, p. 15) To support his opinion, Dr. Bansal documented x-rays taken of her left knee before and after the work injury showed an "extreme acceleration of the arthritic changes" that could not be explained by any other personal factor. (Ex. 1, p. 16) Dr. Bansal noted an x-ray ordered by Craig from April 4, 2017 showed "[*t*]*he left knee has a slightly narrowed medial joint space*," and an x-ray from February 5, 2019, showed "*[m]oderate degenerative change, with the most narrowing in the medial tibiofemoral compartment.*" (Ex. 1, p. 16) (emphasis in original) Dr. Bansal also cited to the medical literature to support his conclusions. No other physician discussed or attempted to refute Dr. Bansal's findings based on the x-rays and other medical evidence.

Dr. Bansal's findings are also supported by Reed's testimony, by the recorded statements of Thressy Jones, Reed's former boss and friend, and Fred Jones, her boyfriend of fifteen years. In her deposition, Reed noted that after the incident she felt sharp pain, "a pop on the inner left side of [her] knee, and a sharp pain underneath. Like right underneath [her] kneecap" as soon as she twisted. (Ex. A, p. 10)

Reed worked with Thressy Jones for five years until April 2018, or approximately six months before the work injury. Reed testified about the physical nature of her job for the Marriott, which Thressy Jones confirmed. Reed stood constantly and frequently engaged in bending and stooping. Reed never complained about her knee or reported her knee was interfering with her ability to perform her job when she worked at the Marriott. Thressy Jones stated she never observed that Reed had any problems performing her job functions at the Marriott, a physical job, or that she had any problems

with her knee before the work injury in this case. I find, based on all of the record evidence, Dr. Bansal's opinion is most persuasive and that the mechanism of slipping off the ladder caused Reed's left knee medial and lateral meniscal tears, as well as an anterior cruciate ligament tear and set in motion a series of biochemical events, which led to an aggravation and acceleration of her left knee arthritis. (Ex. 1, p. 15)

Frito Lay and Indemnity Insurance assert Reed has only sustained a ten percent permanent impairment to her leg, relying on the opinion of Dr. Beecher. As noted above, I found his opinion equivocal, and the opinion of Dr. Bansal to be most persuasive. Using Table 17-33 of the AMA Guides, Dr. Bansal assigned a ten percent lower extremity impairment for the medial and lateral meniscectomies and a "projected" seven percent lower extremity impairment for the anterior cruciate ligament laxity secondary to her tear for a combined sixteen percent lower extremity impairment. (Ex. 1, p. 17) A projected impairment is in the future, and is not based on Reed's presentation at the time of Dr. Bansal's examination. I find Reed has sustained a ten percent permanent impairment to her left lower extremity. I also find Dr. Bansal's permanent restrictions of no kneeling or squatting, to avoid standing or walking for more than fifteen minutes at a time, and to use an assistive device for walking as needed to be Reed's permanent restrictions. (Ex. 1, p. 16)

Knee impairments are included as scheduled losses. Iowa Code § 85.34(2)(p) (2018); Caylor v. Employers Mut. Cas. Co., 337 N.W.2d 890, 894 (Iowa Ct. App. 1983) (citing earlier version of statute). The schedule provides a maximum award of 220 weeks of compensation. Iowa Code § 85.34(2)(p). Iowa Code section 85.34(2)(x) provides when determining functional disability under Iowa Code section 85.34(2)(l), "the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association [sic], as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A." The Commissioner has adopted the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001). 876 IAC 2.4. Under the schedule, Reed is entitled to twenty-two weeks of permanent partial disability benefits, at the rate of $429.62 per week. The parties stipulated Reed was paid twenty-two weeks of compensation at the rate of $429.62. I do not find Reed is entitled to any additional weekly benefits.

III. Alternate Medical Care

Frito Lay and Indemnity Insurance ceased providing medical care to Reed based on Dr. Bollier's opinion that Reed had reached maximum medical improvement and that her need for a knee replacement is unrelated to the work injury. Reed is requesting Frito Lay and Indemnity Insurance be ordered to designate a treating physician to provide care for her left knee and to follow the treating physician's plan, including any recommendation for surgery. As discussed above, I did not find Dr. Bollier's opinion persuasive. I found Dr. Bansal's opinion to be the most persuasive. Dr. Bansal found Reed is in need of a knee replacement. (Ex. 1, p. 15) No physician had agreed to perform the surgery at the time of the hearing.

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of the necessity therefor, allow and order other care." Id. The statute requires the employer to furnish reasonable medical care. Id. § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting "[t]he employer's obligation under the statute turns on the question of reasonable necessity, not desirability"). The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

I found the work injury caused Reed to develop left knee medial and lateral meniscal tears, as well as an anterior cruciate ligament tear and led to an aggravation and acceleration of her left knee arthritis. Dr. Bansal has opined Reed needs additional care. Frito Lay and Indemnity Insurance are responsible for ongoing medical care related to Reed's left knee condition, which may include a total knee replacement. Frito Lay and Indemnity Insurance shall designate a treating orthopedic surgeon to provide ongoing care to Reed, other than Drs. Neff, Bollier, and Beecher, within sixty days of this decision, and shall follow the treating orthopedic surgeon's treatment recommendations.

IV. Costs

Reed seeks to recover the $100.00 filing fee and the $6.47 cost of service. (Ex. 13, p. 46) Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 4.33(6), provides

> [c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

I find Reed is entitled to recover the filing fee and cost of service.

ORDER

IT IS THEREFORE ORDERED, THAT:

Claimant shall take nothing further with respect to additional permanent partial disability benefits.

Within sixty (60) days of this decision, Defendants shall designate a treating orthopedic surgeon to provide ongoing medical care to Claimant for her left knee condition, other than Drs. Neff, Bollier, and Beecher, and shall follow the treating orthopedic surgeon's recommendations.

Defendants shall reimburse the claimant one hundred and 00/100 dollars ($100.00) for the filing fee and six and 47/100 dollars ($6.47) for service.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 11th day of February, 2021.

HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Dutton Channing (via WCES)

Kent Smith (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.